

Combined Appropriation

History of the term for water wells exempt from permitting

1987 – “Combined appropriation” introduced into law. Not defined in statute.

85-2-306, MCA – Appropriations of less than 100 gallons per minute exempt from a permit, ***“except that a combined appropriation from the same source from two or more wells or developed springs exceeding this limitation requires a permit.”***

1987 – Administrative rule defines combined appropriation as:

An appropriation of water from the same source aquifer by two or more ground water developments, the purpose of which, in the department's judgment, could have been accomplished by a single appropriation.

Ground water developments need not be physically connected nor have a common distribution system to be considered a 'combined appropriation.' They can be separate developed springs or wells to separate parts of a project or development. Such wells and springs need not be developed simultaneously. They can be developed gradually or in increments. The amount of water appropriated for the entire project or development from these ground water developments in the same source aquifer is the 'combined appropriation.

1991 – Legislature changes exemption to 35 gpm/10 AF. Combined appropriation not defined.

85-2-306, MCA – A permit is not required before appropriating ground water by means of a well or developed spring with a maximum appropriation of 35 gallons a minute or less, not to exceed 10 acre-feet a year, ***except that a combined appropriation from the same source from two or more wells or developed springs exceeding this limitation requires a permit.***

1993 – Administrative rule changes definition of combined appropriation to:

An appropriation of water from the same source aquifer by two or more ground water developments, that are ***physically manifold*** into the same system. ***(This is the definition in effect today).***

2005 – HB403. Died. Defined combined appropriation as:

Any ground water development consisting of two or more wells or developed springs, ***regardless of whether their diversion works are physically connected or not***, that are developed in connection with a major or minor subdivision.

2006 – Gallatin County petition for rulemaking. Not adopted. Defined combined appropriation as an appropriation by:

(a) a second or any subsequent well, drilled after [the effective date of this rule], on a tract of record in existence on [the effective date of this rule] that **together with all wells on that tract** exceed the flow rate or volume limitations of 85-2-306(3)(a), MCA; or

(b) any well on a tract of record, which is created by subdivision after [the effective date of this rule] and is subject to review under Title 76, Chapter 4, MCA;

(c) Except that a ground water appropriation for use by livestock only is not considered to be part of a combined appropriation

2009 – Clark Fork Coalition petition for rulemaking. Not adopted. Defined combined appropriation as:

An appropriation of water from the same source aquifer by **two or more wells or developed springs that are part of the same project, development, or subdivision**. Two or more wells or developed springs that are part of the same project, development, or subdivision are presumed to appropriate water from the same source aquifer.

2009 – SB17. Died. Permit for certain subdivisions. No definition of combined appropriation.

2011 – HB433. Died. Defined combined appropriation as:

An appropriation of water from the same source aquifer by two or more wells or developed springs for the same beneficial use that **are physically connected through a distribution system**.

2013 – HB561. Died. Defined combined appropriation as:

An appropriation of water from the same source aquifer by two or more wells or developed springs that are **physically manifold and part of the same delivery system when the water is put to use on the same parcel where the wells or developed springs are located**.

2013 – SB19. Passed Legislature, vetoed by governor. Defined in statute combined appropriation as:

An appropriation of water from the same source aquifer by two or more wells or developed springs that are **physically connected into the same system**.

2013 – Proposed administrative rule. Defines combined appropriation as:

Two or more wells or developed springs from the same source aquifer that are:

- (a) physically connected into a single system;
- (b) located within 1,320 feet of one another and are on the same tract of record;
- (c) within a subdivision as defined in 76-3-103, MCA, or land that is divided under 76-3-201 and 76-3-207, MCA, with 40 acres or less which may not exceed ten acre-feet per year, including any subsequent subdivision or division of land thereof; or
- (d) within a subdivision as defined in 76-3-103, MCA, or land that is divided under 76-3-201 and 76-3-207, MCA, with more than 40 acres which may not exceed ten acre-feet per year for every 40 acres or 0.25 acre-foot per year for every additional acre over 40 acres in the subdivision or division of land, including any subsequent subdivision or division of land thereof.

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